

The 29th September, 1994

No. 14/13/87-6 Lab./617.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the work man and the management of H.A.U. Bawal versus Rattan Lal.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL - CUM-LABOUR COURT, GURGAON

between

Reference No. 303 of 1990

RATTAN LAL S/O SHRI BEG RAJ, C/O SHRI SHARDHA NAND, GENERAL SECRETARY,
AITUC OFFICE—214/4—MARLA, GURGAON

and

THE MANAGEMENT OF HARYANA AGRICULTURE UNIVERSITY, BAWAL, REWARI.

Present :

Shri Shardha Nand, for the workman.

Shri M. P. Gupta, for the management.

AWARD

1. In exercise of the powers conferred by clause (e) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department Endorsement No. 38085—91, dated nil.

"Whether Shri Rattan Lal has left his job on his own accord, or his services have been terminated ?
To what relief is he entitled on the decision of this issue ?

2. The facts according to the claim statement are that petitioner was employed as Beldar by the respondent management namely Haryana Agriculture University, Bawal on 1st January, 1972 and his services were illegally terminated on 6th December, 1989 without assigning any reason.

3. The management filed its written statement and contested the plea taken up by the petitioner. It was pleaded that the workman was engaged on casual basis and he had worked for 120 days only from February to November 1988 and thereafter he did not report for duty from December, 1988 to April 1989 and worked for 9 days in May 1989. It was also pleaded that he had worked for 158 days in 1986 and 83 days in 1987 and he had not completed 240 days service and he was not entitled to any relief.

4. On these pleadings, the following issue was framed on 21st February, 1992 :—

Whether Shri Rattan Lal has left his job on his own accord, or his services have been terminated ?
To what relief is he entitled on the decision of this issue ?

5. I have heard the authorised representative of the workman and the management and have gone through the evidence which have come on the record. My finding on the issue framed is as under :—

6. The management has examined Kedar Nath, Agriculture Inspector as MW 1, who brought the muster rolls pertaining to the year 1988 to 1989 and proved the copy of the same Ex. M1. He stated that the petitioner had not put in continuous service of 240 days and the management was doing research work and casual labour was employed under the various schemes during the sowing and harvesting season. He explained that the work of Beldar only started after the sowing season and they had employed permanent Beldar.

7. On the other hand, workman had stepped in the witness box as WW 1. He deposed that he had been employed on 1st January, 1972 and was getting salary of Rs. 800 p.m. and his services were illegally terminated on 6th December, 1989. He stated that he had worked under the Wheat, Barley and other schemes during the period given above and he was not paid any retrenchment compensation. According to the petitioner, he had worked for continuous period from 1st January, 1972 to 6th December, 1989 and his services were illegally terminated. He has admitted that no appointment letter, or wage slip was issued.

8. The management in this case had brought the muster rolls from 1980 till 1989 and they had placed on record, copy of the same which is Ex. M1. It shows the period during which, this workman had worked. According to it, he had worked for the period detailed below :—

Year	Days
1980	108
1981	78
1982	Nil
1983	Nil
1984	Nil
1985	Nil
1986	158
1987	83
1988	120
1989	9

9. The copy of the muster rolls clearly shows that the workman had not worked for 240 days in any of the years, nor workman has been able to bring any material on the file to show that he had worked for the period he had alleged. The workman used to stay away when there was no work. The workman did not summon any record from the management, nor he could point out any discrepancy in the record which was produced by the management during evidence. Admittedly, signatures are obtained on the muster rolls when the pay is disbursed and if the workman had worked for a particular period, the muster rolls would have supported his case, but it is not so. A perusal of the detail clearly shows that the workman had worked with the management for certain broken period in between and there were long gaps/breaks and the petitioner came for work only when he felt like and did not complete continuous service of 240 days in any of the years. Since the petitioner did not put in 240 days of service, he is not entitled to any relief under the provisions of the Act and it was not necessary for the management to comply with the provisions contained in Section 25F of the Industrial Dispute Act, 1947. In view of the above discussion, the petitioner Rattan Lal is not entitled to any relief and it is held that he had left the service on his own. Reference is answered and returned accordingly with no order as to costs.

At 24th August, 1994.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1287, dated the 30th August, 1994.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab/618.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/S M. D. Brecko Precision Engineering (P) Ltd, Dundahera versus Uma Shankar.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON
Reference No. 264 of 1989

between

SHRI UMA SHANKAR, C/O R. L. SINGH (MARUTI), PLOT NO. 26/2, PATAUDI ROAD,
SHIV NAGAR, NEAR KADIPUR OCTROI POST, GURGAON

and
THE MANAGEMENT OF MANAGING DIRECTOR, M/S. BRECKO PRECISION ENGINEERING PVT. LTD, PLOT NO. 287-288 UDYOG VIHAR, DUNDAHERA, GURGAON.

Present :

Shri P. K. Thumpy, for the workman.

Shri M. P. Gupta, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") the Governor of Haryana referred the following dispute between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department, endorsement No. 29301—306, dated the 6th July, 1989 :—

Whether termination/retrenchment of services of Shri Uma Shankar is legal and just? If not, to what relief is he entitled?

2. The facts given in the claim statement are that Uma Shankar was employed by the management on 13th January, 1987 and his services were illegally terminated on 15th March, 1989, the workman was appointed as Grinderman and was attending to all kind of technical operations. He was not even paid retrenchment compensation as required under Section 25F of the Act. It has also been alleged that he was not given any opportunity to defend himself. He was drawing a salary of Rs. 1,043 per month.

3. Claim of the petitioner has been contested by the management and it has been denied that services were terminated on 15th March, 1989. It was pleaded that workman was working in the grinding section and management used to receive orders from M/s Eicher India Ltd. and that firm had stopped giving orders, therefore, workman was retrenched from services with effect from 14th March, 1989 and prior to retrenchment, compensation had been offered but the workman did not collect the same and therefore, management had remitted the same through money order, which was also received back as it had been refused by the workman. It was pleaded that there were three Grindermen namely Mohan Lal, Khem Chand and Uma Shankar. Mohan Lal was senior most, who had left on his own accord while Khem Chand was still in service and since services of Uma Shankar became surplus because of non receipt of orders therefore, he was retrenched from service. It was further pleaded that prior to retrenchment, seniority list was pasted on the notice board and after retrenchment, information as required under the Rules was also sent to the appropriate authority and it was not necessary to give alternative job to the workman and no stigma had been attached upon the workman.

4. In the rejoinder filed by the workman facts contained in the claim statement were reiterated while those in the written statement were controverted.

5. On the pleadings of the parties, following issue was framed on 27th July, 1990 :—

Whether termination/retrenchment of services of Shri Uma Shankar is legal and just? If not, to what relief is he entitled?

6. I have heard learned authorised representatives of the parties. My findings on the issue framed are as under.

7. In order to prove its case, management has examined Shri S. K. Sharma, Assistant Manager MW1, who deposed that workman had been appointed as a Grinderman on 12th January, 1987 and since they had failed to receive orders from M/s Eicher India Ltd, therefore, retrenchment order was passed on the principle of "last come first go" as per seniority list which had been displayed on the notice board. He proved forwarding letter Ex. M1 and the seniority list Ex. M3. He further stated that no objection had been received and final seniority list was displayed, which was Ex. M5 and copy of the forwarding letter Ex. M4 had also been sent to the Labour Inspector, Gurgaon. He deposed that services were to be retrenched from 14th March, 1989 and therefore, on 13th March, 1989,—*vide* Ex. M-6 compensation, wages on account of notice had been offered to the workman but he had refused to accept and the next morning, entire amount had been sent through money order, Receipt Ex. M9 to Ex. M16 were also proved by him. He deposed that notice as required under Rule 75 had also been sent to the Government. He proved copy of the notice Ex. M-18. He further deposed that workman had asked for experience certificate and he himself had given his designation as Grinderman. He proved service certificate Ex. M21 Shri. C. M. Madan, Director stepped in the witness box as MW-2 and reiterated the case set up by them in the written statement namely that orders from M/S Eicher Tractors were not being received, therefore, services of the workman had been retrenched.

8. The workman had stepped in the witness box as WW1. He proved appointment letter Ex. W1. He stated that he had been appointed as Machine Operator and that the time of termination of his service, there were about 50/60 workers and there was a union of workers in the company and he was one of the signatories to the demand notice Ex. W2. He stated that he had not received any money order and his services have been illegally terminated and he was ready to goin his duty. In the cross examination, he admitted that Sant Ram, Thangai Parshad and M. S. Bhandari were working in the Turning Section.

9. It has been argued on behalf of the management that services of the workman had been retrenched as they had failed to receive orders and sufficient compliance of Section 25-F of the Act had been made as workman was offered wages for the period of notice alongwith retrenchment compensation and notice had also been sent to the appropriate Government. It was argued that workman refused to accept the notice Ex. M6. therefore, the very next day, notice Ex. M7 had been sent at the address given by the workman alongwith the money order and sufficient compliance had been made. Reliance has been placed upon The Management of Indian Compressors Makers Corporation, New Delhi *versus* D. D. Gupta and others 1977 Lab. I. C. page 694, Reliance has also been placed upon Pepsu Transport Co. Private Ltd *versus* State of Punjab and others 1968 Lab. I. C. page 351. It was argued that amount in this case had actually been tendered and the workmen had refused and in that case he cannot later on say that the wages were not paid to him.

10. On the other hand, it has been argued on behalf of the workman that workman had been appointed as Machine operator and his designation was also given in the Identity Card which had been issued by the management, and neither retrenchment compensation, nor wages in lieu of notice had been given to him, nor it had been sent at the address given in the Identity Card. Therefore, retrenchment order was illegal and sufficient compliance of Section 25F of the Act had not been made.

11. Admittedly provisions contained in Chapter VB of the Act are not applicable and in this case provisions of Chapter VA are applicable to the respondent management. According to the management, they had displayed seniority list and they had also invited objections, but no objections were received, therefore, final seniority list Ex. M5 was displayed on the notice board. Workman in this case was given retrenchment notice and he had refused to accept the notice. In the said notice, retrenchment benefits which were due to the workman were also given and workman had refused to accept the notice, therefore, notice had been sent to him,—*vide* registered letter alongwith the money order which was received back with the report of refusal. Letter and the money orders receipt have been placed on the file. The Management in this case had also sent notice of retrenchment in form "p" to the Government and it is Ex. M-18 on the file. From the above mentioned facts, it is evident that management had complied with the legal provisions of the Industrial Disputes Act at the time of retrenchment of workman's service. But it is to be seen whether management had complied with the principles of "last come first go" as per seniority list, which they had displayed. According to the final seniority list Ex-M5, N. S. Bhandari who was also appointed as Machine Operator has been appointed on 15th December, 1988 and he was working in the turning section. Petitioner in this case was appointed on 12th January, 1987. The most crucial document on the file is the appointment letter Ex. W1 and clause 15 specifically states that workman could be asked to work in one department or the other when need arose. Meaning thereby services could be utilised in other section as well. In that case, management did not comply with the principles of "last come first go" as per seniority list and if services of Uma Shankar were to be retrenched, it would have been done only after services of N. S. Bhandari were retrenched. It has come in the statement of workmen that N. S. Bhandari was still working with the management. In fact a suggestion had been put to the witness and it had been admitted that Thangari Parsad and N. S. Bhandari were working with the management. The date of appointment of N. S. Bhandari was 15th December, 1988 while that of Uma Shankar is 12th January, 1987, therefore, N. S. Bhandari was junior to Uma Shankar and it is held that services of the petitioner were illegally retrenched. The management did not follow the principles of "last come first go". Consequently, it is ordered that termination/retrenchment of the petitioner was illegal and the petitioner Uma Shankar is entitled to reinstatement with continuity of service and full back wages. Reference is answered and returned accordingly with no order as to costs.

ANITA CHAUDHARY,

The 3rd August, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1288, dated the 30th August, 1994.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.